



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

www.deq.virginia.gov

Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewing, P.E.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

Homes by Blue Ridge, Ltd.

Augusta County, Virginia

(VPDES Permit No. VA0088943)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Homes by Blue Ridge, Ltd. for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "HBBR" means the Homes by Blue Ridge LTD, the owner and operator of the Facility.
7. "Facility" means the Homes By Blue Ridge Sewage Treatment Plant located in Augusta County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0088943, which became effective May 30, 2000 and expired May 30, 2005. Permit limits included pH, biochemical oxygen demand ["BOD"] total suspended solids ["TSS"], and Total Residual Chlorine ["TRC"]. Permit reissued September 12, 2005 to expire May 31, 2010.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. HBBR owns and operates the wastewater treatment facility serving approximately 60 mobile homes in Augusta County, Virginia, which is subject to the Permit. This Facility discharges to the South River, the Shenandoah subbasin, and the Potomac River basin.
2. On July 12, 2004 DEQ issued Notice of Violation (W2004-07-V-0006) to HBBR for:
 - A. Chlorine effluent limitation violations during March and April 2004.
 1. April- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.18 mg/l
 2. April- Chlorine Concentration *Maximum* required 2.4 mg/l, reported 2.5 mg/l
 3. March- Chlorine Concentration *Maximum* required 2.4 mg/l, reported 2.6 mg/l

These are violations of 9 VAC 25-31-50 and Part I.A. of the Permit.
 - B. Failure to report 1st annual groundwater monitoring.

This is a violation of 9 VAC 25-31-50.

3. On December 9, 2004 DEQ issued Warning letter (W2004-12-V-1001) to HBBR for failure to submit complete and timely permit application.

4. December 29, 2004 – Notice of Violation (W2004-12-V-0003) issued to HBBR for:

- a. Failure to submit complete and timely permit application.

This is a violation of 9 VAC 25-31-100.D & E.1 and Part II.M. of the Permit.

5. February 3, 2005 – Notice of Violation (W2005-02-V-0003) issued to HBBR for:

- a. Chlorine effluent limitation violations during July, August, October, and November 2004.

1. July- Chlorine Concentration *Maximum* required 2.4 mg/l, reported 2.5 mg/l
2. August- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.4 mg/l
3. October- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.1 mg/l
4. November- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.1 mg/l

These are violations of 9 VAC 25-31-50 and Part I.A. of the Permit.

B. Failure to report 8th quarter groundwater monitoring

This is a violation of 9 VAC 25-31-50 and Part I.D. of the Permit.

6. On March 11, 2005 DEQ met with facility representatives to discuss the issues.

7. On March 30, 2005 DEQ issued Notice of Violation (W2005-03-V--0017) to HBBR for:

- A. Chlorine effluent limitation violations during July, August, October, and November 2004, and January 2005

1. July- Chlorine Concentration *Maximum* required 2.4 mg/l, reported 2.5 mg/l
2. August- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.4 mg/l
3. October- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.1 mg/l
4. November- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.1 mg/l
5. January- Chlorine Concentration *Average* required 2.0 mg/l, reported 2.1 mg/l

These are violations of 9 VAC 25-31-50 and Part I.A. of the Permit.

B. Failure to submit 8th quarter groundwater monitoring report.

This is a violation of 9 VAC 25-31-50 and Part I.D. of the Permit.

- C. Failure to submit information to be incorporated in HBBR's O&M manual. Information was requested November 5, 2004.
This is a violation of 9 VAC 25-31-50 and Part I.E.4 of the subject Permit.
- D. Failure to submit Permit application by November 26, 2004
This is a violation of 9 VAC 25-31-100.D & E.1. and Part II.M. of the Permit
- E. Failure to submit Facility Closure Plan by November 26, 2004.
This is a violation of 9 VAC 25-650-60.B.
- F. Failure to submit Financial Assurance Mechanism no later than thirty (30) days after the approval of the Facility Closure Plan.
This is a violation of 9 VAC 25-650-50.E.
8. On May 4, 2005 DEQ issued Notice of violation (W2005-05-V-0004) to the HBBR for:
- A. Chlorine effluent limitation violation
1. February- Chlorine Concentration *Maximum* required 2.4 mg/l, reported 2.6 mg/l
This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.
 2. Failure to report 9th quarter and 3rd annual groundwater monitoring.
This is a violation of 9 VAC 25-31-50 and Part I.D. of the Permit.
9. On August 15, 2005 DEQ issued Notice of Violation (NOV-05-08-VRO-002) to the HBBR in response to discharging without an authorized effective permit, discovered during an inspection on June 10, 2005. Permit VA0088943 expired on May 30, 2005. This is a violation of 9 VAC 25-31-50.
10. HBBR corrected all of the violations set forth above, except for 7.C. (failure to provide information required for the Facility's O&M manual). All reports and required documents have been received and on Sept. 12, 2005 DEQ reissued VPDES Permit #VA0088943 to HBBR. The chlorine effluent limit violations have been addressed through training and the implementation of proper procedures to ensure that proper effluent limits are maintained.
11. HBBR agrees to enter into an Order, this document, pay civil charges for violations of the Permit, violations of regulatory requirements, and the unpermitted discharge. In addition, HBBR agrees to complete requirements to address the failure to provide information required for the Facility's O&M manual as outlined in Appendix A.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders HBBR, and HBBR agrees, to perform the actions described in this Appendix A of this Order.

2. Within 30 days of the effective date of this Order, HBBR shall pay a civil charge of \$5,200.00 in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

HBBR shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check and shall include a note that payment is being made in pursuant to this order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of HBBR, for good cause shown by HBBR, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, HBBR admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. HBBR consents to venue in the Circuit Court of the County of Augusta for any civil action taken to enforce the terms of this Order.
5. HBBR declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by HBBR to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. HBBR shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. HBBR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HBBR shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which HBBR intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and HBBR. Notwithstanding the foregoing, HBBR agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

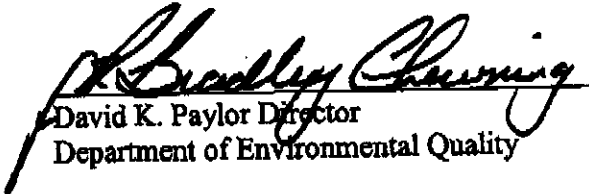
- a. HBBR petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or

- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to HBBR.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve HBBR from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of HBBR certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind HBBR to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of HBBR.
13. By its signature below, the Homes by Blue Ridge, Ltd. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 2, 2006.


David K. Paylor Director
Department of Environmental Quality

Homes by Blue Ridge, Ltd. agrees to the issuance of this Order.

By: [Signature]

Title: V. Pres.

Date: 3-30-06

Commonwealth of Virginia

City/County of Waynesboro

The foregoing document was signed and acknowledged before me this

30th day of March, 2006, by Jerry Wright
(name)

who is V. Pres. of Homes by Blue Ridge, Ltd., on
(title)

behalf of said company.

Melisa M. Neese

Notary Public

My commission expires: 6-30-08

**APPENDIX A
SCHEDULE OF COMPLIANCE
HOMES BY BLUE RIDGE, LTD.**

1. By February 28, 2006 HBRR shall provide the amended portions of the O&M manual containing the following information to DEQ for review and approval:

- A. Remove the expired permit and include a copy of the current active Permit in the O&M Manual
- B. Provide a plan for material storage (chlorine) that will not allow discharge of stored materials to state waters.